

FILED
9/17/2021
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT
JJ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 21 CR 128
v.)	
)	Judge John F. Kness
KEVIN SMITH)	

MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED

Now comes Kevin Smith, the defendant ("defendant"), by and through himself, submits this Motion to Dismiss with prejudice for Failure to State a Claim Upon Which Relief can be Granted based upon Fed. R. Civ. P. 12(b)(6). A memorandum to support this motion is filed along with this motion.

The following are facts from case number 21 CR 128 ("case"):

1. On April 6, 2021, the defendant, Kevin Smith, filed a Motion for Acceptance-Motion for Discovery-Motion to Dismiss (Dkt.17).
2. A copy was mailed to Stephen Heinze, counsel for government, at 219 S. Dearborn Street, Chicago, IL 60604. The envelope was received and signed for by Peter Hunt on April 12, 2021 (USPS tracking number 70180360000094866701).
3. On April 27, 2021, the defendant, Kevin Smith, was present at the scheduled hearing by way of Special Appearance.

4. On April 27, 2021, Judge Robert W. Gettleman entered and continued the Motion for Acceptance-Motion for Discovery-Motion to Dismiss (Dkt.17).
5. On April 27, 2021, it was ordered that case number 21 CR 128 (“the case”) was reassigned to Judge John F. Kness.
6. From April 6, 2021 through April 27, 2021, twenty one days had passed excluding the 6th of April.
7. From April 27, 2021 through May 18, 2021, another 21 days had passed excluding the 27th of April.
8. On May 18, 2021, the defendant, Kevin Smith, appeared at the scheduled hearing by way of Special Appearance.
9. On May 18, 2021, Judge John F. Kness entered and continued the Motion for Acceptance-Motion for Discovery-Motion to Dismiss (Dkt.17).
10. On May 26, 2021, the defendant, Kevin Smith, appeared at the scheduled hearing by way of Special Appearance. At this hearing, there was no mention of the Motion for Acceptance-Motion for Discovery-Motion to Dismiss (Dkt.17).
11. On June 30, 2021, the defendant, Kevin Smith, appeared at the scheduled hearing by way of Special Appearance. At this hearing, there was no mention of the Motion for Acceptance-Motion for Discovery-Motion to Dismiss (Dkt.17).
12. At the in-person hearing on July 30, 2021, counsel for the government, Stephen Heinze the nonmoving party, stated that he didn’t know if the motion, filed at Docket 17 by the defendant, had any legal merits and didn’t know if the motion (Dkt. 17) would require any government response, but that he would wait for the Court’s decision as to any motion.

13. Judge John F. Kness said he would look at the motions filed by the defendant and stated that if they (the motions) required a response, he would put something on the docket.

14. By July 30, 2021, seventy-two days had passed without any mention of the motion filed at Docket 17 since the last mention of it on May 18, 2021.

Based on the facts set forth within this motion and it's supporting memorandum, the defendant, Kevin Smith, respectfully and humbly asks the court to dismiss this case with prejudice for failure to state a claim upon which relief can be granted with respect to the Federal Rules of Civil Procedure Rule 12(b)(6).

ATTESTATION

I declare that to the best of my knowledge under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



Kevin Smith

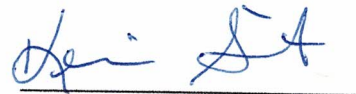
Executed on September 17, 2021

Certificate of Service

I hereby certify that a copy of this document was sent via email on September 17, 2021 to the Northern District of IL electronic filing system at Temporary_E-Filing@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via email on September 17,
2021 to Judge John F. Kness in care of Enjoli Fletcher at
Enjoli_Fletcher@ilnd.uscourts.gov

I hereby certify that a copy of this document was sent via email on September 17,
2021 to Stephen Heinze at Stephen.heinze@usdoj.gov



Kevin Smith
1440 W Taylor, #1390
Chicago, IL 60607

Notary Public

I, Dantrae Lemons, a notary public for said County and State, do
certify that Kevin Smith personally appeared before me and
executed the foregoing.

Witness my hand and seal this 17th day of September, 2021.

Cook (County)
Illinois (State)

Dantrae Lemons
Notary signature

My Commission Expires: 06/07/2022

